HARRIETT B. RAVENSCROFT

IBLA 87-58 Decided November 10, 1988

Appeal from a decision of the Area Manager, Bennett Hills Resource Area, Idaho, Bureau of Land Management, rejecting desert land entry application I-9088.

Set aside and remanded.

1. Desert Land Entry: Applications

The Board will set aside a BLM decision rejecting a desert land entry application based on a determination that the land applied for could not be economically farmed and will remand the case to BLM for readjudication where BLM failed to aggregate that land with private land owned by the applicant for purposes of its economic feasibility determination and where the record is inadequate to make a determination based on aggregation.

APPEARANCES: Harriett B. Ravenscroft, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Harriett B. Ravenscroft has appealed from a decision of the Area Manager, Bennett Hills Resource Area, Idaho, Bureau of Land Management (BLM), dated September 11, 1986, rejecting her desert land entry application I-9088.

On December 11, 1974, Harriett B. Ravenscroft filed desert land entry application I-9088 for 120 acres of public land situated in secs. 29 and 32, T. 6 S., R. 14 E., Boise Meridian, Gooding County, Idaho, pursuant to section 1 of the Act of March 3, 1877, as amended, 43 U.S.C. § 321 (1982). The application was accompanied by a petition for classification of the land as suitable for desert land entry. Subsequent thereto, Harriett Ravenscroft filed amended applications on February 26, 1975, and January 18, 1977, seeking an additional 120 acres of public land in that township, along with petitions for classification of all 240 acres of land as suitable for desert land entry. The land sought was encompassed in three parcels of land either bordering or within the immediate vicinity of private land owned by Vernon

and Harriett B. Ravenscroft. 1/ In her application, Harriett Ravenscroft proposed to irrigate the land by means of a sprinkler-type system with water from an existing canal of the North Side Canal Company, in which she and her husband owned water rights, and an existing well on their private land. She stated that farming of the land sought would be integrated with existing farming operations on their private land, thereby taking advantage of existing equipment and unused water rights, and providing broader capitalization of building and overhead costs. She indicated that they would follow the same crop rotation, viz., grain, corn, beets, and/or potatoes, and that they anticipated a positive net return given specified crop prices and operating costs, thereby demonstrating the economic feasibility of the entry.

In order to assess whether to approve Harriett Ravenscroft's desert land entry application and the environmental impact thereof, BLM prepared a "Combined Land Report and Environmental Assessment" (Land Report), dated April 6, 1981. The report recommended that the desert land entry application be rejected as to the 200 acres of land situated in secs. 29 and 32 and approved as to the 40 acres of land situated in sec. 21, based primarily on land-use planning considerations which identified the former land for "retention in public ownership" and the latter land for "disposal for agricultural purposes" (Land Report at 1). In the case of the 40-acre parcel of land in sec. 21, the report noted that there was available access across public and private land and water from the North Side Canal Company, the parcel was "sufficiently close [to the Ravenscrofts' private land] to be managed satisfactorily as an economic unit," and economic data indicated farming would be profitable, given either wheat or alfalfa hay production from 38 acres of potential cropland, average crop prices, and various capital and operating costs. The Land Report was approved by the Acting Area Manager and the District Manager, Shoshone District.

On December 22, 1981, Harriett Ravenscroft filed a relinquishment of 160 acres of land included in her pending desert land entry application, thereby leaving only the 40-acre parcel of land situated in the SW 1/4 NW 1/4 sec. 21 (for which BLM had recommended approval) and a 40-acre parcel of land situated in the NE 1/4 SW 1/4 sec. 29 (for which BLM had recommended rejection). She stated that the "addition [of these parcels] to the Ravenscroft farm would round out the economic viability of that property." In an addendum to the Land Report, dated January 18, 1982, and concurred in by the Area Manager and the District Manager, BLM took notice of the relinquishment and recommended that the lands originally recommended for rejection by BLM (including the 40 acres in sec. 29) be classified as not suitable for desert land entry.

1/ The three parcels of land were described as the SW 1/4 NW 1/4 sec. 21; the N 1/2 SE 1/4 and E 1/2 SW 1/4 sec. 29; and the SW 1/4 NE 1/4 sec. 32, all situated within T. 6 S., R. 14 E., Boise Meridian, Gooding County, Idaho. The private land owned by the Ravenscrofts is situated in the SW 1/4 SW 1/4 sec. 29 and the N 1/2 NW 1/4, and SE 1/4 NW 1/4 sec. 32, T. 6 S., R. 14 E., Boise Meridian, Gooding County, Idaho.

On January 22, 1982, the Idaho State Office issued a proposed classification decision, classifying the 200 acres of land encompassed by desert land entry application I-9088 situated in secs. 29 and 32 as not suitable for desert land entry and classifying the remaining 40-acre parcel in sec. 21 as suitable for desert land entry. Harriett Ravenscroft filed a protest to the proposed classification decision on February 25, 1982, challenging only the classification of the 40 acres in sec. 29. On March 23, 1982, the Idaho State Office issued an initial classification decision, dismissing the protest and affirming the proposed classification decision. The record indicates that Harriett Ravenscroft filed an April 20, 1982, appeal from the initial classification decision with the Secretary of the Interior and that the State Director finally informed her by letter dated March 19, 1986, that the initial classification decision had become the final order of the Secretary in accordance with 43 CFR 2450.5(b). There is no evidence that Harriett Ravenscroft has challenged the final classification decision, and it therefore appears that she has accepted the unavailability of the 40 acres in sec. 29.

In his September 11, 1986, decision, the Area Manager rejected desert land entry application I-9088 with respect to the 40-acre parcel of land situated in the SW 1/4 NW 1/4 sec. 21 based on a determination regarding the economic feasibility of farming that land, in accordance with 43 CFR 2520.0-8(d)(3). That regulation provides simply that, in determining whether to allow an entry, BLM "will take into consideration such factors as * * * the practicability of farming the lands as an economically feasible operating unit." In order to judge economic feasibility, the Area Manager explained that BLM had engaged in a computerized economic analysis which provided the expected net return from farming operations given either of two crop rotations (normal and hay-grain); expected crop production; crop prices; costs with respect to farm equipment; seed, fertilizer, and other material costs; labor costs; costs of electricity for a pump; costs for the irrigation system, using either new or used equipment; and associated interest rates and terms. In all, BLM made computer runs using four different farming scenarios based on either normal or hay-grain crop rotation and either new or used irrigation equipment. The Area Manager stated that the desert land entry application was rejected because the economic analyses yielded "negative returns to investment." Harriett Ravenscroft has appealed from the Area Manager's September 1986 decision.

In her statement of reasons for appeal, appellant's principal contention is that BLM improperly failed to consider the economic feasibility of farming the 40-acre parcel of land sought in her desert land entry application together with the "neighboring existing farm" on the Ravenscrofts' private land. Appellant states that, having failed to do so, BLM has "overstated" the costs of farming the 40-acre parcel "[b]ecause the water, machinery and management are already in place." Appellant also states that pump costs are "not a necessary ingredient in determining [economic] feasibility" where the 40-acre parcel can be irrigated "by the use of gravity flow." 2/

2/ Appellant also concludes that the effect of BLM's economic analysis is "to administratively render null and void the 3/23/82 classification that the parcel was physically suitable for desert land entry." BLM's determination that the 40-acre parcel of land could not be economically farmed,

In response to appellant's appeal, BLM conducted additional computerized analysis of the economic feasibility of farming the 40-acre parcel, taking into account the use of either a gravity or a sprinkler-type irrigation system. In all, BLM made computer runs using six different farming scenarios based on either modified normal or hay-grain crop rotation, new or used irrigation equipment, and gravity or sprinkler-type irrigation. In a memorandum concurred in by the Area Manager, a BLM realty specialist reported that this analysis showed a "net loss" for each farming scenario 3/ (Memorandum from Realty Specialist to Area Manager, dated Oct. 16, 1986, at 1). The realty specialist also concluded that:

> There are no doubt some efficiencies and economy in incorporating a smaller land unit with an existing agricultural operation. However, to attempt an evaluation on the extent of such would result in evaluating the applicant's ability rather than the economic feasibility of public land going into permanent agricultural development. Production costs based upon equipment use, fertilizers, herbicides and overhead will exist at similar levels whether it is a new operation or part of an existing operation.

(Id. at 1-2).

In an October 29, 1986, letter to appellant, the Area Manager essentially repeated the substance of the October 16, 1986, memorandum to him from the realty specialist. He also stated that he was providing copies of the "data worksheets" for the six computer runs and stated that the runs themselves were available for inspection. Appellant has not responded to the October 29, 1986, letter.

[1] Under section 1 of the Act of March 3, 1877, the Secretary has the authority to patent tracts of desert land not exceeding 320 acres to persons who make satisfactory proof of reclamation of the land and pay the required purchase price. The statute specifically provides that entered tracts of land shall be "managed satisfactorily as an economic unit." 43 U.S.C. § 321 (1982). The Department has construed this language to require that BLM determine the "practicability of farming the [entered] lands as an economically feasible operating unit." 43 CFR 2520.0-8(d)(3). Where BLM's analysis fails to establish economic feasibility, the Board has affirmed BLM's rejection of a desert land entry application. Roger K. Ogden, 77 IBLA 4, 90 I.D. 481 (1983).

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fn. 2 (continued)
however, has no bearing on whether the land is physically suitable for desert land entry. See 43 CFR 2430.5(e); David V. Udy, 81 IBLA 58, 60 (1984). That classification remains effective, but appellant must make independent proof that the parcel can be economically farmed.

3/ The realty specialist specifically noted that the scenarios involving a gravity-type irrigation system showed a net loss even though they did not take into account the "additional cost of land preparation and labor required for a gravity system, nor the loss of some acreage that can be farmed only if sprinkled" (Memorandum from Realty Specialist to Area Manager, dated Oct. 16, 1986, at 1).

In evaluating the economic feasibility of farming the 40-acre parcel of land sought by appellant, BLM engaged in a computerized analysis. Appellant does not challenge BLM's reliance on that analysis. Indeed, we have approved its use. See Roger K. Ogden, supra at 8, 90 I.D. at 484. Nor does appellant challenge BLM's selected crop rotations or the anticipated crop production and revenue from that production. Rather, appellant challenges specific costs incorporated in that analysis relating to "water, machinery and management," and concludes that these costs are "overstated" because BLM failed to consider the 40-acre parcel as an integral part of the existing farming operation. Appellant's charge is general in nature and does not specifically identify which costs are overstated or the extent to which they are overstated. Nevertheless, appellant raises a significant matter.

In Frederic C. Tullis, 102 IBLA 215, 222 (1988), we recently concluded that a determination of economic feasibility must take into account the particular circumstances of the desert land entry applicant including preexisting ownership of equipment needed in the farming operations. Moreover, we also noted with approval that the Assistant Secretary had, in Ewing T. Skinner, A-30468 (Apr. 5, 1966), "permitted the aggregation of land applied for under a desert land entry application with adjacent patented land owned by the applicant's father for purposes of making a determination of economic feasibility, where the applicant intended to farm all of the land as a 'joint operation.'" Id. (quoting from Ewing T. Skinner, supra at 4). Further, 43 CFR 2520.0-8(d)(3) specifically states that one of the other factors to be considered by BLM in deciding whether to allow a desert land entry is the "private lands farmed by the applicant."

It is clear from the October 16, 1986, memorandum of the BLM realty specialist that BLM did not aggregate the 40-acre parcel of land with the Ravenscrofts' private land for purposes of determining the economic feasibility of farming the subject land. Rather, BLM concluded that such aggregation would improperly result in an evaluation of appellant's "ability." We disagree. To the extent that aggregation would result in lower overall production and/or overhead costs, including those attributable to farming the subject land, because of the ability to use existing farm equipment, it would have a direct bearing on the question of economic feasibility. 4/

The record at present, however, does not permit the Board to conclude the extent to which aggregation would result in lower production and/or overhead costs with respect to the subject land and, thus, whether the economic analysis would yield a positive, rather than a negative, net return under any of the farming scenarios posited by BLM. The record contains the various production costs, including costs attributable to each piece of farm machinery to be employed under each scenario, and overhead costs as a percentage of production costs. However, there is no breakdown of these costs such that we can judge how they would be affected by aggregation. 5/ The

4/ We note, however, that BLM's consideration of the use of existing farm equipment does not preclude inclusion of costs for depreciation, insurance, taxes, and interest in its economic analysis.

5/ Appellant has also argued that a determination of the economic feasibility of farming the subject land must take into account water already available to appellant. However, there is no indication that taking this

BLM realty specialist states only that such costs will be "at similar levels whether it is a new operation or part of an existing operation." We cannot confirm that conclusion. Moreover, because appellant has not provided any information demonstrating that the subject land can be economically farmed given aggregation, we are simply not in a position to judge whether farming will be economically feasible should the subject land be aggregated with the Ravenscrofts' private land. Accordingly, we must set aside the September 1986 decision of the Area Manager and remand the case to BLM for further development of the record and reevaluation of the economic feasibility of farming the SW 1/4 NW 1/4 sec. 21. David V. Udy, supra at 62. Any subsequent decision by BLM adverse to appellant will be appealable to the Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to BLM for further action consistent herewith.

John H. Kelly
Administrative Judge

fn. 5 (continued)
factor into account would translate into any decreased costs under BLM's economic analysis and thus would affect the ultimate results obtained by BLM. That analysis indicates that BLM did not consider the cost of acquiring water.

ADMINISTRATIVE JUDGE HUGHES CONCURRING:

While in complete agreement with Judge Kelly on his disposition of the merits of the appeal, there is a procedural point in this case that I feel requires special comment.

The Bennett Hills Resource Area Office, Bureau of Land Management (BLM), issued its decision rejecting appellant's desert land entry application on September 11, 1986, and she filed her notice of appeal from BLM's decision on October 7, 1986. BLM did not immediately forward the matter to us when the notice of appeal was filed. Instead, following receipt of appellant's notice of appeal, BLM held the case file, doing additional economic analysis based on points raised by appellant in her notice of appeal. The results of this additional analysis were placed in the case file on October 16, 1986, along with an internal memorandum stating as follows: "Nothing in the applicant's appeal leads me to believe our decision is in error and I recommend the case file be submitted to IBLA for their review." Copies of the memorandum and additional analysis were not initially provided to appellant. The case file was also forwarded to us on October 16, 1986.

The filing of a notice of appeal removes BLM's authority to take further formal action on the matter under appeal and vests exclusive authority over the matter with the Board of Land Appeals, and BLM's authority is not restored until the Board takes action disposing of the appeal. AA Minerals Corp., 27 IBLA 1 (1976). In keeping with the principle that BLM's jurisdiction over the case is transferred to the Board of Land Appeals when the notice of appeal is filed, BLM is expected to promptly forward the complete, original case file to Board within 5 days of receipt of the notice of appeal, in order to allow the Board to exercise its authority over the matter. BLM has no discretion as to whether the case file should be submitted to the Board for review. A case file may not be withheld while BLM reviews an appellant's reasons for appeal, either to determine whether its decision was incorrect or to prepare a response to the appellant's reasons.

Thus, although the delay was minimal in this case, it was not correct for BLM to withhold sending the matter to us while it analyzed appellant's notice of appeal. 1/ As discussed above, the correct procedure for BLM to follow in this case would have been to forward the case file promptly to us

1/ Although the delay occasioned by the BLM's mishandling of this particular appeal was minimal, it could be substantial in other situations. For example, if the appellant filed a notice of appeal which did not include any reasons why BLM's decision was in error, which he may legitimately do (see 43 CFR 4.412(a)), it would be at least 30 days after the notice of appeal is filed before a statement of reasons was prepared. This time might well be much longer, as an appellant is entitled to receive extensions of time to file its reasons in some circumstances. 43 CFR 4.22(f). If BLM waits for appellant to file its reasons before it transmits the case file to the Board, the case may be substantially delayed, because the Board does not add the case to its docket or assign it to a panel of judges until the file is received from BLM.

following receipt of the notice of appeal, as discussed above, retaining a photocopied "dummy file" for its own use while the matter was on appeal.

It is important to remember that, although BLM lost its jurisdiction to take further formal action on the matter when a notice of appeal was filed, it remained free, after the matter was forwarded to the Board, to continue to analyze the feasibility of the proposed desert land entry in light of the issues raised by the appellant. If, after reviewing the reasons put forth by appellant, BLM concludes that its decision was incorrect, the proper procedure for it to follow to correct itself would be to petition the Board to remand the matter to its jurisdiction. Melvin N. Barry, 97 IBLA 359 (1987). 2/ Similarly, if, after reviewing the reasons put forth by appellant, BLM wishes to defend the correctness of its decision and to respond to the appellant's contentions, the correct procedure for BLM to follow would be to file an "answer" with the Board, as contemplated by 43 CFR 4.413. 3/ Indeed, BLM is encouraged to review an appellant's reasons, either to allow BLM to determine whether its decision might be wrong, or to facilitate preparation of its answer.

Requiring BLM to promptly forward all appeals to the Board obviously protects a party's right to have his appeal heard by ensuring that the consideration of the appeal will not be delayed by BLM. Requiring BLM to regain jurisdiction from the Board before it takes further formal action on the matter allows the Board to maintain accurate records on pending appeals and prevents inconsistent actions in a case by BLM and the Board. BLM retains the right to get "its side of the story" before the Board through filing an answer, and BLM is encouraged to do so.

Another important procedural consideration here is the prohibition against receipt by the Board of "ex parte communications," that is communications "from one side only." Under 43 CFR 4.22(b) and 4.27(b), there shall be no written communications concerning the merits of a proceeding between any party to the proceeding, including BLM, and the Board, unless a copy of the written communication is served on all other parties to the case. The purpose of this requirement is to ensure that all parties have a full and fair opportunity to respond to all contentions brought before the Board. In this way, both sides to the dispute are protected from unfounded allegations offered to the Board by their opponents.

The Board has interpreted this prohibition to include any documents placed in the case record after the notice of appeal is filed. Amoco Production Co., 101 IBLA 152, 156 (A.J. Irwin, Concurring); see James C. Mackey, 96 IBLA 356, 361 n.1, 94 I.D. 132, 135 n.1 (1987). Thus, it is improper for BLM to place a response to an appeal in the case file without serving a copy on the appellant.

2/ In order to minimize delay, the Board attempts to honor these requests as quickly as possible.

3/ BLM's answer may be, but is not required to be, prepared in consultation with the appropriate branch of the Department's Office of the Solicitor, which serves as BLM's legal counsel.

Here, since the economic analysis was completed by BLM and placed in the case file after the appeal was filed, BLM was required to send copies of the analysis to appellant. Following receipt of the case file by the Board, BLM was informally advised of its obligation to serve copies. By letter dated October 29, 1986, BLM provided appellant with copies of BLM's memorandum of October 16, 1986, and data work sheets for the further economic analyses were duly served on appellant. Thus, no prejudice occurred here.

I stress that the Bennett Hills Resource Area Office is not alone in its uncertainty as to the appropriate procedures for handling appeals, and this concurrence is not written with the intention of singling that office out for criticism. In fact, the Bennett Hills Resource Area Office has been very cooperative in complying with the requirements, when they were made known to it. The purpose of this exegesis on the "Gospel of Procedure" is to set forth guidance in a published decision so that all offices of BLM may conform their procedures to avoid mishandling of appeals and resulting delays.

David L. Hughes
Administrative Judge

105 IBLA 332